

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 LAREDO DIVISION

4 IIIPG ENTERPRISES INC., ET AL \$ CASE NO. 5:15-CV-00029
\$ LAREDO, TEXAS
5 VERSUS \$ MONDAY,
\$ APRIL 27, 2015
6 CITY OF LAREDO, ET AL \$ 9:39 A.M. TO 10:54 A.M.

7
8 MOTIONS HEARING

9 BEFORE THE HONORABLE J. SCOTT HACKER
UNITED STATES DISTRICT JUDGE

10
11 APPEARANCES:

12 FOR PLAINTIFF/DEFENDANT: SEE NEXT PAGE

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1 LAREDO, TEXAS; MONDAY, APRIL 27, 2015; 9:39 A.M.

2 THE COURT: All right, we're here on Case Number
3 15-CV-29, IIIPG Enterprises Incorporated, et al versus City
4 of Laredo.

5 Could we please get announcements for the Record?

6 MS. MORALES: Maria Elan Morales, Your Honor, and
7 Marilu Cantu for the Plaintiffs --

8 THE COURT: All right.

9 MS. MORALES: -- IIIPG and PedroPete and
10 Mr. Sanchez.

11 MS. GUERRERO-SOUTHARD: Elizabeth Guerrero-
12 Southard on behalf all the Defendants, the City of Laredo
13 and the individual Council Members.

14 THE COURT: All right. I just had some questions
15 for you this morning to kind of help me get through this so
16 I can get a ruling out.

17 Let me ask the Plaintiffs -- and I don't know,
18 Ms. Morales are you answering the questions or Ms. Cantu or
19 how do you want to do this?

20 MS. CANTU: Ms. Morales --

21 MS. MORALES: I will answer, Your Honor.

22 THE COURT: All right.

23 MS. MORALES: I might, from time-to-time, might
24 have to ask her something.

25 THE COURT: That's fine. I've got some general

1 questions for regarding your clients, exactly what
2 recyclables are they hauling in these loads? I assume that
3 they're picking up construction debris, but then you
4 classify that also as recycling, which seems to be different
5 than what is defined through the Municipal Code for
6 recyclables under the program.

7 MS. MORALES: For example, Your Honor, Mr. --
8 IIIPG, Mr. Gonzalez was hired recently by the Laredo
9 Independent School District to demolish all the homes that
10 they purchased to expand the Nixon High School complex.

11 So that in --

12 THE COURT: Over on Bartlett?

13 MS. MORALES: Over on Bartlett.

14 -- so all of those homes obviously contained some
15 recyclable materials such as copper-type lines that were
16 used in the gas, the water in those homes. Those are the
17 kind of recyclable materials that Mr. Gonzalez would find
18 when he does his demolition.

19 In other words, his contract states that when he
20 demolishes all these properties, these homes, whatever
21 recyclables he finds, he's allowed to keep and he sells to
22 third parties. Those are the type of recyclable materials.

23 Now PedroPete and Mr. Sanchez, dba Visa what they
24 do is they contract to put the containers in the demolition
25 sights and so those might contain also those type of

1 materials.

2 THE COURT: What type of material?

3 MS. MORALES: Whatever is in the old buildings,
4 recyclables.

5 THE COURT: Okay.

6 MS. MORALES: So those are the type -- that's the
7 type of business they're in and those are the type of
8 recyclable materials that they might find. As opposed to
9 soda cans and --

10 THE COURT: Plastics.

11 MS. MORALES: -- plastics. There could be some
12 there, but that's mainly their business. Their business is
13 in the business of demolishing --

14 THE COURT: It is somewhat minute compared to the
15 overall load, correct?

16 MS. MORALES: Oh, yes. When you demolish the
17 buildings, you could find a lot of recyclable materials.

18 THE COURT: So how does their Municipal Code --
19 how does it force the company to give up recyclable material
20 by obtaining a franchise or dispose of all materials?

21 MS. MORALES: Well because you have to take them
22 to the City landfill. It's no longer theirs.

23 THE COURT: You mean, they're required -- they
24 can't take out the copper --

25 MS. MORALES: Mr. Gonzalez, for example, would

1 have to take everything that he finds in the demolishing of
2 those buildings to the landfill.

3 THE COURT: He can't take it out and resell it?

4 MS. MORALES: No, not according to the Ordinance.

5 THE COURT: Okay. Defendants do you need to
6 comment on that? I'm just curious how that works.

7 MS. GUERRERO-SOUTHARD: Your Honor, they're
8 attacking the amended Ordinance which deals solely with
9 recycling. It defines what recycling is and gives examples
10 of plastic bottles, plastic jugs, detergent containers,
11 aluminum cans. Not the information that Plaintiff is
12 suggesting. Those are matter -- construction and demolish
13 waste has been a part of the City's Ordinance for many years
14 prior to 2013.

15 And they've been notified because they received
16 request to those franchised. So they can take -- if they're
17 demolishing, they're considered self-haulers when they go to
18 a landfill. That's different than you putting containers
19 out there and making it a commercial stop.

20 THE COURT: But one of her clients is a
21 self-hauler.

22 MS. GUERRERO-SOUTHARD: One of them is
23 self-hauling.

24 THE COURT: Okay.

25 MS. GUERRERO-SOUTHARD: But nobody says we have to

1 take all your stuff to the landfill. They're trying to get
2 the landfill and we're saying you can't get to the landfill
3 unless you have a Franchise Agreement because you're using
4 our streets and thorough ways to conduct your business.
5 That's what the City is saying.

6 They're required to take certain items to
7 designated landfills, that's correct.

8 But am I incorrect in saying they can take their -
9 - whatever they consider copper and take it somewhere else?

10 MR. GEISS: No, they can take that -- there's no -
11 - there's nothing to make them take that to the City
12 landfill.

13 THE COURT: Ms. Morales, that's how I -- my
14 understanding of it, but I could be misinformed. But it
15 doesn't -- I don't see anything that keeps your clients from
16 taking out recyclables that they want to take out and do
17 whatever they want to with it and still go to the landfill
18 with that other part of the load.

19 MS. MORALES: The Ordinance specifically states
20 that it's all materials, Your Honor.

21 THE COURT: Well do you have a response to that?

22 MS. GUERRERO-SOUTHARD: Your Honor, they can point
23 to whatever section of the Ordinance they're referring to
24 and we can address that.

25 MS. MORALES: I think, Your Honor, that the

1 problem for us is -- I mean, we can get bogged down the
2 definitions and what they can and can't do. Our main
3 complaint is that there's a City Charter that says that
4 they're only going to -- that the City of Laredo is
5 authorized to require -- to require these franchises from
6 public utilities.

7 THE COURT: Okay.

8 MS. MORALES: Plaintiffs are not public utilities.

9 THE COURT: All right.

10 MS. MORALES: And not only are they not public --
11 I mean, we look at the definition under State law as to what
12 is the public utility and we have several situations where,
13 I mean, we have several definitions in the State statute and
14 we've outlined them in our responses, Your Honor, but
15 basically --

16 THE COURT: Well say I -- I think that's a pretty
17 easy argument. I mean, I understand that. But say I get
18 past that and I've got to address the other ones. I'm
19 trying to see how this works out and how it kind of blends
20 together.

21 MS. MORALES: Well, there's some additional that
22 they themselves -- the Defendants themselves cite a
23 definition -- I mean, a section of the Code that
24 specifically excludes in the Code.

25 Let's say you that you say get past that and

1 they're able to prevail that they have the authority to do
2 that and we get past the definition of, you know, why can't
3 they just subtract -- I mean, retract whatever is? There is
4 an exception to that requirement, Your Honor, in that in
5 Section -- Administrative Code Section 230, Section
6 Subsection (33) -- which they themselves quote in their
7 response to our Motion for Injunctive Relief.

8 And says that -- and I will tell you exactly what
9 the section says, Your Honor. It excludes -- and this is
10 the section that talks about solid waste disposal services
11 fees.

12 THE COURT: All right.

13 MS. MORALES: And it says at the very end of
14 subsection (h):

15 "This section does apply to a private entity that
16 contracts to provide temporary solid waste disposal
17 service to a construction project."

18 Assuming that the solid waste includes
19 recyclables, which our contention that it does not include
20 recyclables. This is not a case where we're saying the City
21 cannot regulate the disposal of solid waste.

22 We're saying what we do is not considered solid
23 waste under State statute, under any definition and then it
24 specifically excludes private entities that a contractor
25 provides solid waste disposal even if the Court were to say

1 well, I'm not going to be mincing words here and solid waste
2 does include construction and demolition waste. Then we're
3 specifically excluded from those regulations.

4 In other words, we -- what we do, Your Honor, is
5 we say we're going to demolish this building; it's a
6 temporary thing. We go out there, we demolish it, we put
7 the construction and demolition waste in containers and we
8 take it out to the landfill, which we've been doing for
9 years and years.

10 THE COURT: Okay.

11 MS. MORALES: This Ordinance was passed in 2013
12 and it's kind of a misleading to say that we've been on
13 notice of this. There were several attempts in the past to
14 regulate it by a franchise and they were unsuccessful.

15 And if we look at the 2005 Ordinance itself, the
16 City itself says:

17 "This Ordinance is in compliance with Section 8 of our
18 City Charter," which it's not.

19 But they themselves have to make a finding that it
20 does comply with their own Charter because the Charter is
21 the Constitution for the City of Laredo. And we're saying
22 that even if we get passed all that, we're still exempt.

23 THE COURT: All right, Ms. Guerrero?

24 MS. GUERRERO-SOUTHARD: Certainly, Your Honor. I
25 think she's touched on several things. I'm going to try to

1 discuss those matters.

2 One, she is pointing to the City Charter,
3 Section 8. And they're saying that we are prevented somehow
4 -- the City is prevented somehow from issuing Franchise
5 Agreements to anything other than a public utility.

6 May I give a copy of the Charter provision to the
7 Court for reference?

8 THE COURT: Please.

9 MS. GUERRERO-SOUTHARD: And Your Honor, may I
10 please also give a folder that I have prepared. I know you
11 have specific questions, but just in case I have some of the
12 case law that I'm going to point to.

13 But to start with, they're contention is that City
14 Charter prevents us from issuing Franchise Agreements to
15 anything other than public utility.

16 We look at 8.2, the reading says:

17 "That Counsel shall have the power by Ordinance to
18 grant and renew and extend all franchise of all public
19 utilities." Not to all public utilities. There's a
20 distinction.

21 Case law provides that a City can require
22 franchise licenses for the use of their streets, their
23 thoroughfares and their alleys in conjunction with a utility
24 companies or other entities that are utilizing those streets
25 to conduct their businesses. Nothing in this Charter

1 prohibits that, so that is, you know, the first point on all
2 public utilities.

3 With respect to -- with respect -- and to address
4 the issue, I think the way the Plaintiffs have this case it
5 brings forth an individual who's claiming that they conduct
6 demolition services and then they haul their own stuff.

7 And then you have two other individuals that what
8 they really do is put out these containers out and
9 establishments can bring in their waste and then they
10 transport, so to speak, that waste.

11 There's a distinction because Plaintiff's Counsel
12 is correct only in respect to when it deals with demolition,
13 you have your own way, you demolish and you're going to haul
14 that waste and "you demolish," that's different than what
15 the solid waste Ordinance and the Recycling Ordinance are
16 attempting to address. Because that's what they call
17 "self-hauler." You're hauling your own, in essence, waste
18 because you've demolished it.

19 There is nothing precluding -- and they've been
20 doing this as Plaintiffs suggest -- for years. The problem
21 was and where this became a problem is that it was noted by
22 several City managers and officials that what Plaintiffs
23 were really trying to do is take other people's waste, not
24 the ones they demolished.

25 And they had a website that, you know, said we

1 pick up and transport, you know, garbage and waste. And
2 there's a difference. When you do that and you use the City
3 streets and thorough ways, then you have to have a Franchise
4 Agreement. And there's nothing in any statutory provision
5 that says, "City, you cannot regulate that; City, you cannot
6 regulate recycling; City, you cannot require, you know,
7 you're not allowed to require Franchise Agreements."

8 Quite the contrary. The statutory provisions
9 state that a City can regulate solid waste -- am I going too
10 far, Your Honor?

11 THE COURT: No, no, keep going.

12 MS. GUERRERO-SOUTHARD: Okay. They can regulate
13 solid waste; they can require that they come to certain
14 landfills; they can require that they can issue Franchise
15 Agreements. In fact, the case law provide -- as cited in
16 our responses -- that they can even do it to an exclusive
17 person.

18 That's not what the City is trying to do. They've
19 told -- ample opportunities, look just get a Franchise
20 Agreement. Once you get the franchise, just like these
21 other two entities, you can come into our landfill. They're
22 not contending they're trying to go to the recycling fill
23 and that we're -- the recycling facility and we're
24 precluding them from doing so. They're saying we want into
25 your landfill and we want to into your landfill had been an

1 Ordinance that had been in existence since for a long time
2 requiring this franchise license, not just 2013.

3 The only -- the only provision that 2013 provides
4 for is that it says now also we want to apply to this
5 recycling. And it's clear on the Ordinance where they add
6 the term recyclables and they add with respect to
7 recyclables we want you to use the recycling facility. It's
8 not what they're contending.

9 THE COURT: Does the 2013 Ordinance include the
10 fine for the first time?

11 MS. GUERRERO-SOUTHARD: Yes. No, no, no, I'm
12 sorry. No, no, Your Honor. The fine has been in place for
13 quite sometime. But now the fine is attached to recycling
14 also. Does that clarify?

15 THE COURT: Let me ask you this. Ms. Morales said
16 that IIIGP [sic] or -- that's my dyslexic thing -- that's my
17 dyslexia I have going on up here. But IIIPG that like a
18 contract to tear down the homes at Bartlett and then take
19 them to the landfill, you said that that's -- if they're
20 doing it, they're self-haulers. It doesn't -- they don't
21 come in under the Ordinance?

22 MS. GUERRERO-SOUTHARD: That's correct.

23 THE COURT: Okay. So when they get to the
24 landfill, how can you know if they're self-haulers versus
25 the side business that they're advertising on the internet

1 that you said you could go and see?

2 MS. GUERRERO-SOUTHARD: That's the information
3 that was provided during the occurrence of the -- tried to
4 come in, Your Honor. They tried to come into a landfill.
5 They are asked and generally the City has been very gracious
6 to say is this self-hauling and it has allowed people to
7 come in when they attest that they're self-hauling. I
8 believe that information came to Mr. Geiss (phonetic) and
9 through testimony we can show that they received information
10 that that particular instance it wasn't a self-haul.

11 THE COURT: Okay.

12 MS. GUERRERO-SOUTHARD: And that it's been going
13 on for a while. This is not a one instance or one
14 occurrence.

15 And if they can prove that, you know, they can
16 take documents in, look I was, you know, I have a contract
17 saying here that I demolish or something to that effect, I'm
18 certain that they would consider that.

19 THE COURT: Ms. Morales, do you have any comments
20 on that?

21 MS. MORALES: Well I have several comments, Your
22 Honor. I guess I don't know how to read the Court -- the
23 Charter because that's exactly what it says.

24 Of course, they can do it by Ordinance. So as a
25 matter of fact the Ordinance that's what they do. They

1 enact an Ordinance that says we're granting a franchise, but
2 it says to all public utilities.

3 I don't know how they get around that. I don't
4 know -- it could have said something else. Other City
5 Charters say something else. But not the City of Laredo.
6 And so for them to say we require -- they're trying to
7 regulate the, you know, the solid waste and the disposal of
8 it. There's no question. But that's not what we're
9 questioning.

10 In other words, they're entitled to tell us, "Hey,
11 we're going to give this bins and you're going to put your
12 trash in there; you're going to put it on the street and
13 we're going to charge you \$7.00 and we're going to take it
14 to the landfill." Of course they're entitled to do that.

15 There are situations, Your Honor, where the Cities
16 don't have that ability, for example the City of El Cenizo
17 and then they don't have their own and there's other
18 subdivisions in San Antonio that they are not part of the
19 City, so they contract with private entities to do that. To
20 do that which the City is authorized to do.

21 And some of these people that have the franchise,
22 that's what they do in lieu of me putting my trash out in my
23 building, in my office here I have a choice. I can contract
24 with TrashGo or with Southern Sanitation to get one of their
25 dumpsters and I put my trash in there and it goes to the

1 City landfill.

2 That's what we're talking about -- about their
3 right to regulate that. Of course they can, and they're
4 entitled to do that. This is not what our business is
5 about. And it is not true that we don't -- we don't do what
6 Southern Sanitation does; we don't take the place of the
7 City of Laredo because the City of Laredo is not in the
8 business of contracting to carry out your demolition and
9 construction waste. And there's why there's a definition
10 for demolition and construction waste in the Code.
11 Otherwise, there's no reason for it to be there.

12 And there's no reason for there to be a definition
13 for solid waste -- which clearly the City is entitled to
14 regulate. That's not what this case is about.

15 What we're saying is, "City of Laredo, you're not
16 in the business of making contracts with any construction
17 company, anybody that wants to demolish their buildings and
18 haul that demolition and construction waste. You're not in
19 that business. You're not entitled to a franchise based on
20 that."

21 I don't know what would happen if the City's
22 Charter would say that. All I'm saying at this point,
23 that's not what the City Charter authorizes you to do.
24 You're not in the business of doing that. We're in the
25 business of doing that, and we are entitled to go to the

1 City landfill and get rid of our demolition construction
2 waste. And you're interfering with our business. You're
3 not letting us in.

4 And it is not true that he's not -- that IIIPG has
5 not been allowed to go. They've known for years. He has
6 number with the City. In other words, he doesn't have to
7 pay every time he goes in. He has a number that they give
8 you and they bill you for it. He knows he has to pay for
9 that service. That's the business we're in.

10 We're not in the business of collecting
11 citizen's -- and in their own brief they keep talking about
12 contract to collect the citizen's trash and all that and
13 solid waste. Yeah, we agree with that. You can regulate
14 that. That's not what this case is about.

15 And so, Your Honor, if you look at the home-rule
16 and what they're supposed to do and if they follow their own
17 Charter, they're not supposed to be requiring -- they were
18 not supposed to pass an Ordinance that says that.

19 As a matter of fact, a 2005 Ordinance that makes
20 reference to Section -- Article 8 talks about haulers. In
21 other words, there's a distinction.

22 THE COURT: But doesn't that Ordinance just seem
23 like that's what the City is trying bring, the self-haulers
24 that are -- they're saying is not under the current
25 Municipal Code that they're just trying to bring in that

1 category of haulers into the franchise fee?

2 MS. MORALES: Yeah, but that's not what the
3 franchise is. We're not taking the place of the City and
4 hauling construction and demolition.

5 In other words, the City provides a service to
6 pick up your trash. That is part of what the City does. We
7 don't do that. They're not contracting with us through a
8 franchise to do that. We have private contracts. We go to
9 individuals who are contractors. I'm going to build
10 something; I'm going to demolish something. Okay, here --

11 THE COURT: But doesn't that demolition become
12 trash?

13 MS. MORALES: No, Your Honor, not under -- not
14 under --

15 THE COURT: Because you're going to dispose it,
16 right?

17 MS. MORALES: -- not under the Code, no. There's
18 a definition for that.

19 MS. GUERRERO-SOUTHARD: They're trying to come
20 into the landfill.

21 MS. MORALES: And you have the right to charge us
22 and they have been charging us. They have a right to charge
23 us and they could even impose a hauler permit fee.
24 Franchise fees and service fees we're -- you know, we're
25 playing with words that don't mean the same thing. What I'm

1 saying is --

2 THE COURT: Well I agree and it sounds like both
3 sides are going it. For example, you say that basically --
4 you basically say that every -- that you're loads are
5 recyclables when you're using a different definition for
6 recyclable than what the City is using, right?

7 MS. MORALES: Yeah, because we're going by the
8 Texas Safety Code.

9 MS. GUERRERO-SOUTHARD: They're not trying to get
10 into our recycling facilities.

11 MS. MORALES: That's what --

12 MS. GUERRERO-SOUTHARD: They're trying to get into
13 our landfills. And that's the question. And the Code of
14 Ordinance does give you -- does include on refuse the
15 definition of construction and waste.

16 May I present it to the Court?

17 THE COURT: Sure.

18 MS. GUERRERO-SOUTHARD: It has been a part of
19 this, if you look --

20 THE COURT: Did you make her a copy?

21 MS. GUERRERO-SOUTHARD: Yes, yes.

22 THE COURT: Why don't you, when you mark this
23 write down 1 and 2? And we'll put them in as Exhibits.

24 MS. GUERRERO-SOUTHARD: Okay, I didn't know if we
25 were starting already entering Exhibits?

1 THE COURT: Well, you can. I mean, just whatever
2 you want.

3 MS. GUERRERO-SOUTHARD: Can we mark this as
4 Exhibit 2?

5 THE COURT: Go ahead, I'll let you do that.

6 MS. GUERRERO-SOUTHARD: Thank you, Your Honor.

7 (Defense Exhibit 2 marked for identification.)

8 THE COURT: I already have one.

9 MS. GUERRERO-SOUTHARD: Okay. On Exhibit 2, Your
10 Honor and this is --

11 THE COURT: I'm just -- in fact I'm just trying to
12 get enough background. I'll give each side ample time to
13 argue anything they want to in the motions. It's just I'm
14 trying to get up to speed where I have a thorough
15 understanding of what's going on, so that I can listen to
16 what you're saying and, you know, take heed to it, so to
17 speak.

18 MS. GUERRERO-SOUTHARD: And I appreciate that,
19 Your Honor.

20 THE COURT: Go ahead.

21 MS. GUERRERO-SOUTHARD: This Chapter 14, which
22 covers garbage, trash and refuse. And the original -- not,
23 I can't say original because it was amended from other
24 Ordinances, but, you know, prior to the 2013, it has
25 definitions, Your Honor. On rubbish -- which is the page 2,

1 very end and page 3, it encompasses construction and
2 demolition waste as part of rubbish.

3 So if you want to come into the City's facilities
4 with rubbish -- including construction and demolition
5 waste -- that is not a self-hauler, that is something that
6 somebody else demolishes, you go pick up the waste, you
7 bring it forward. Then in order to transport that in our
8 streets, you have to have a Franchise Agreement. And that's
9 been the law prior to 2013, as evidenced here in the Code of
10 Ordinances that require Franchise Agreements.

11 They were entering into the landfill before
12 because they were telling the City, we're self-hauling.
13 We're doing this, we demolish, we self-haul. They believe
14 that.

15 THE COURT: That or they just weren't -- you
16 weren't enforcing it well at the time.

17 MS. GUERRERO-SOUTHARD: No, they were saying that
18 they were self-hauling. So there is a fee for putting waste
19 in the landfills. So that's separate and apart from a
20 franchise that says if you're going to be conducting this as
21 a business using our streets and thorough ways, you need to
22 have a Franchise Agreement.

23 So again, just to point out, the Plaintiffs have
24 two components. One point of that is a construction and
25 demolition business and then the two other that just simply

1 put their trucks out there and collect and transport.

2 I'm trying to clarify the differences, Your Honor,
3 and establish that this wasn't something that was just
4 related to recyclables and they're attacking the Ordinance
5 that is regarding recyclables that was amended in 2013.
6 That's what they're attacking. And they're not trying to
7 enter into our facilities for recycling. They're trying to
8 enter into our landfills.

9 THE COURT: Ms. Morales, Ms. Cantu.

10 MS. CANTU: Can I answer that?

11 THE COURT: Go ahead.

12 MS. CANTU: Just to clarify that point. We're not
13 only attacking the recyclables. The franchise -- the plain
14 language of the franchise states -- and it itemizes --
15 garbage, trash or recyclable materials. That's what we're
16 fighting.

17 Construction and demolition waste has its own
18 definition by the plain language of the Ordinance. It also
19 states that once you get a franchise, you are only supposed
20 to take out of those materials, garbage, trash and
21 recyclable materials, to the City landfill or whatever
22 sanitary landfill they designate.

23 However, they're not making the point that even
24 though they only itemize those things as -- for the
25 definitions and they have their own definitions, but in the

1 plain language of the Ordinance, it states that they are
2 going by the definitions of the Texas Administrative Code,
3 Section 330.3.

4 Those definitions conflict with the definitions
5 that the City is posting in Ordinance. And that's what
6 we're alleging. That's what we're attacking.

7 They don't match. And recyclable materials, as
8 the City is defining, includes metals. That includes the
9 copper that our clients get from the demolition projects.
10 That is if they get a franchise they are -- by the Ordinance
11 -- they have to take it to the City landfill or there's the
12 recovery operations.

13 THE COURT: Okay, Ms. Guerrero?

14 MS. GUERRERO-SOUTHARD: Now they're attacking the
15 whole Ordinance. Okay, though we're here on a Preliminary
16 Injunction based on their efforts to enjoin the City from
17 enforcing the 2013 amended portion of the Ordinance dealing
18 with recycling.

19 We can address the other matters. We can point at
20 you case law that provides that the City can regulate solid
21 waste, it can issue even exclusive Franchise Agreements, but
22 the way they're attacking it is saying, "You're violating
23 the Sherman Act because you're trying to monopolize" and
24 there's various case precedence that says you can even issue
25 an exclusive Franchise Agreement for what now they're

1 asserting, they're attacking which is the solid waste
2 portion of this that encompasses construction and
3 demolition.

4 There's no violation of the Sherman Act because
5 they're -- this is not just the City saying only we can do
6 this. They're just saying if you want to do it, get a
7 Franchise Agreement. Two other people have complied.

8 THE COURT: Let me ask, Ms. Morales, how do you
9 get around the interstate commerce element of that, of the
10 Sherman Act?

11 MS. CANTU: Your Honor, I believe that we just --
12 we mentioned that in our brief. Let me get that section.

13 Under Section 2 of the Sherman Act, Your Honor,
14 the Plaintiffs have to show two elements. One is the
15 possession of the monopoly power in the ready market and two
16 the local acquisition of maintenance of that power as it
17 stems from growth or development as the consequence of the
18 superior court business document or historic taxes.

19 That means that the City, like I already mentioned
20 earlier, by the plain language of the Ordinance, they're
21 saying that all recyclable materials have to go to their
22 designated facilities.

23 So they have the power of monopoly because that
24 means that everyone -- and that's the plain language of the
25 Ordinance. It says every person that for a fee transports

1 somebody else's garbage, trash, or recyclable materials have
2 to take it to the landfill or the recovery facilities.

3 THE COURT: So you're saying there doesn't have to
4 be an interstate commerce nexus there that affects outside?

5 MS. CANTU: Not according to Section 2 of the
6 Sherman Act. To my understanding, Your Honor, the Section 2
7 of the Sherman Act, that particular section only has those
8 two requirements.

9 THE COURT: All right. City?

10 MS. GUERRERO-SOUTHARD: They're all City of Laredo
11 entities, from what I gather from their pleadings and I
12 don't know how that affects interstate commerce. Again,
13 there's cases that I pointed to where even the control -- if
14 it was an exclusive franchise requirement, Your Honor --

15 THE COURT: You don't have to show just the
16 individual Plaintiff's affect the interstate. Don't you
17 have to show the activity?

18 MS. GUERRERO-SOUTHARD: Affects them -- oh, but
19 how is it by us requiring Franchise Agreement that it
20 affects interstate commerce? Anybody from out of state can
21 come and say, "You know what, Laredo, we want to be
22 transporting into your landfill." And so you just have to
23 comply with the Ordinance like two other entities have been
24 doing since 1996. Then just go get a Franchise Agreement.

25 It's an application, Your Honor, that you put

1 forth. It's considered by the City Council, not by an
2 individual director or anything. They're the ones that
3 consider, "Okay, we're going to grant you a franchise."

4 It's not an exclusive franchise like other cities
5 have. So how is there a monopoly? When we're saying, okay,
6 everybody that wants to do it, can do it. Just get a
7 franchise.

8 And by their own testimony and their own evidence,
9 there's two other entities that are doing this. It's not
10 just the City, it's not the City.

11 THE COURT: Ms. Cantu, do you want to say
12 something?

13 MS. CANTU: Well yes, Your Honor. There are two
14 other entities that are doing what the Ordinance says, but
15 those companies deal mainly with garbage and trash, which is
16 completely different from what our companies are doing; what
17 our clients are doing. They are into the construction and
18 demolition and waste collection.

19 They don't deal with garbage. They don't deal
20 with trash as those items are defined in the Texas
21 Administrative Code, Section 330. So there's a distinction.

22 THE COURT: Let me ask you, Ms. Cantu or
23 Ms. Morales, you know, you're asserting equal protection
24 claim also. Who are the others that are similarly situated
25 with you that are being treated differently?

1 MS. CANTU: We were just citing to affected
2 clients, Your Honor, IIIPG, Mario Sanchez and PedroPete
3 Services. In the case that I've cited, the *Village of*
4 *Wilbrook* (phonetic), in that case, the City passed an
5 Ordinance -- well, it was about lots and they had to -- in
6 order to get services in the lots, 15 -- I believe it was 15
7 -- I don't remember the -- it was a particular that they had
8 to do. Everybody else was allotted 15 meters or acres -- I
9 don't know what it was -- and the City was about to go in
10 and they would put in the services.

11 However, the Plaintiff, the *Village of Wilbrook*,
12 she had more than -- she had 30 acres or something like that
13 and the City demanded that she needed -- I'm confusing this,
14 I'm so sorry.

15 THE COURT: That's okay, go ahead.

16 MS. CANTU: The point is that the City demanded
17 more of her while the others they had less than her and they
18 were still able to get the services. But because she had
19 more, the City would not grant her services.

20 So the court stated in that case that because they
21 were making -- they were making -- I don't know what it's
22 called. They were giving her a greater burden than the
23 others, that she was eligible for the equal protection.

24 THE COURT: I'm trying to figure out who is being
25 treated differently in your argument. Is there's someone

1 that's either hauling construction debris that's not paying
2 his franchisee fee that they're letting in? Are you saying
3 that --

4 MS. CANTU: Yes. Yes, we have evidence -- which
5 this is the point that we were trying to go into discovery
6 because we do have evidence of other companies that have
7 been allowed into the City landfill or they do the same type
8 of business as our clients, and they are being allowed into
9 the landfill. And to our knowledge, there hasn't been any
10 applications for new franchises in the same type of business
11 that our clients are in.

12 THE COURT: All right. Ms. Guerrero?

13 MS. GUERRERO-SOUTHARD: Your Honor, that's their
14 burden of proof and we have no information that that is
15 being applied that way. We have testimony from the solid
16 waste manager, if allowed to, that the reason why they've
17 been told time and again for years is because they don't
18 have this franchise license agreement.

19 They were allowed to come in when they were
20 attesting that that was their construction demolition. If
21 they have an equal protection claim, it's their burden to
22 show and address it even in pleadings for our purposes of
23 the Motion to Dismiss, which is also before the Court.

24 THE COURT: That's why I'm considering --

25 MS. GUERRERO-SOUTHARD: Right.

1 THE COURT: -- that's the reason I'm asking the
2 question.

3 MS. GUERRERO-SOUTHARD: Right. There are some
4 similarly situated. You can't just say, yes, eventually
5 we're going to prove that. You don't move forward on a
6 cause of action like that unless you can assert that there
7 is somebody indeed that's being treated differently.

8 And I can't contravene something that I'm not even
9 given a name about whose being treated differently, Your
10 Honor. It's just -- we're making this statement that
11 somebody else is being treated differently.

12 THE COURT: Let me ask Plaintiffs, under the equal
13 protection claim, you assert that the City has an improper
14 motive to treat you differently.

15 What do you think that motive is?

16 MS. CANTU: Money, Your Honor. It's a money grab
17 Ordinance that they're trying to do. They are just trying
18 to get money out of this Ordinance and forcing our clients
19 to get a franchise that clearly under the Charter they're
20 not eligible or they don't fall into that category.

21 THE COURT: But if it's just a money grab, why
22 wouldn't they be grabbing the other people that you say that
23 you know of that are in the same business as your clients,
24 but they're not --

25 MS. CANTU: Well because, Your Honor, they

1 already --

2 THE COURT: I mean, if it's a money grab, I want
3 to collect from everybody and I'm sure the City does.

4 MS. CANTU: Well they're not doing their job
5 obviously because they didn't even know how many companies
6 had a franchise until we brought it up.

7 And the fact is that they already tried to enforce
8 this Ordinance to two of our Plaintiffs before and nothing
9 went through. They just let it sit.

10 THE COURT: Do you have any comment from the City,
11 Ms. Guerrero?

12 MS. GUERRERO-SOUTHARD: Your Honor, again we would
13 have testimony, if allowed, from Mr. Geiss (phonetic) that
14 will tell you that the recycling facility is not -- they're
15 run it at a loss since its inception. They lost even close
16 to 500,000, am I correct, that one year.

17 This is not a money grab. Revenue certainly is
18 not a reason to pre-empt an Ordinance. They have to
19 establish that somehow, you know, even if it was a
20 revenue-generating function -- which it's not. It's for the
21 health and safety and welfare of the citizens. And they
22 address on the face of the Ordinance for recycling purposes
23 they were attempting to address pilfering and scavenging,
24 not to raise revenue.

25 But even if that were to be established, the

1 City's evidence is going to be that they -- this money goes
2 to streets. Whatever they get from the franchise goes to
3 repair streets. And it's certainly -- the money that is
4 collected is not going to address all the streets' problems
5 in Laredo.

6 So they would have to establish somehow -- not
7 only is the franchise license money received from it, not
8 designated to the area that we're saying, but it's not true
9 because they're making way more money. And that's not going
10 to be the evidence, Your Honor.

11 MS. CANTU: Your Honor, if I may answer to that?

12 THE COURT: Go ahead, Ms. Cantu.

13 MS. CANTU: When they had the public hearing or
14 the introduction of the Ordinance into the facts, the
15 discussion was about, yes, scavenging and pilfering the
16 recyclable materials.

17 THE COURT: This is the 2013 Ordinance?

18 MS. CANTU: 2013.

19 THE COURT: Okay.

20 MS. CANTU: You know, the Ordinance in question.

21 All their discussion had to deal with the blue
22 bins. The materials that were going into the blue bins.
23 City Council Member Ned Rice, even stated that the City had
24 lost --

25 MS. GUERRERO-SOUTHARD: I'm just going to object,

1 Your Honor, as to relevance.

2 MS. CANTU: -- three million dollars.

3 THE COURT: But my point is, even I say what you -
4 - even if I accept what you say is true, I mean the point is
5 doesn't the general Municipal Code touch upon other things
6 besides just the blue bins and that's what they are falling
7 back to. They're saying that your companies that you
8 represent have always had the requirement. It's just never
9 been enforced or when it was enforced -- or at least I took
10 it hadn't been enforced very well -- but she's saying none
11 of your clients is claiming to be a self-hauler more than
12 they are, even though they had this dual business.

13 MS. CANTU: They're not dual businesses, Your
14 Honor. They are owned individually.

15 THE COURT: Well I know that you've got two that
16 are not --

17 MS. CANTU: Right.

18 THE COURT: -- that are not self-haulers. But
19 then you have one client who kind of in -- or even passes as
20 both functions, a self-hauler and also a business who picks
21 up the demolition waste and tried to get it into the
22 landfill.

23 MS. CANTU: Well, IIIPG, Your Honor, it's a
24 demolition company. It's a construction and demolition
25 company. Yes, like it leases equipment to demolish the

1 buildings. It can also lease the container. And he can
2 self-haul to the landfill.

3 So the City is telling us that as a self-hauler he
4 can release a container and drive it on his own? That's
5 what they're saying. Because he is the construction and
6 demolition business.

7 THE COURT: Okay. But my question is that even
8 not being a self-hauler, they're saying that the original
9 Municipal Code before the 2013 Ordinance included the
10 franchise fee for that type of service.

11 MS. CANTU: And it was objected to, Your Honor,
12 when they -- and I couldn't find anything that that
13 Ordinance actually went into effect. Yes, they introduced
14 it, but I never found anything that they actually went into
15 signing of that Ordinance in 2005.

16 THE COURT: But that's -- we're not talking about
17 2005. I think they're saying back to 1998.

18 MS. CANTU: In 1996 there was a specific Ordinance
19 that was issued to Southern Sanitation, Your Honor. That
20 Ordinance specifically addresses that it is a refuse company
21 that is being granted a franchise. It has nothing to do
22 with the franchise for everybody like they're doing now.

23 MS. GUERRERO-SOUTHARD: Your Honor, may I
24 submit --

25 THE COURT: Yes, Ms. Guerrero?

1 MS. GUERRERO-SOUTHARD: -- Exhibit 3?

2 (Defense Exhibit 3 marked for identification.)

3 MS. GUERRERO-SOUTHARD: Exhibit 3 is to IIIPG and
4 it's dated December 3rd, 2008. And Your Honor, while
5 certainly there's never been any money collected from IIIPG,
6 it has been pointed out to him -- to Mr. Gonzalez -- that if
7 you want to go to City landfill, that under Chapter 14,
8 14-9(j), you are required to have a Franchise Agreement.

9 Because this dates back to prior Ordinance, not
10 just the recycling. And I know they're contesting --
11 they're out trying to raise something that never passed in
12 2005, but this dates back for a long time. And they've been
13 under this notice. Just get a Franchise Agreement like the
14 other companies.

15 MS. CANTU: Well I'd just like to point out --

16 THE COURT: Ms. Cantu, for the Record.

17 MS. CANTU: I'm sorry.

18 THE COURT: That's okay.

19 MS. CANTU: I'd just like to point out this letter
20 says that it refers to a section of an Ordinance, It doesn't
21 state what Ordinance are they referring to.

22 THE COURT: All right. Let me just say generally,
23 is there anything you want to say regarding your motions,
24 Ms. Morales?

25 MS. MORALES: Your Honor, of course, whatever we

1 put in our -- put in our brief in support of our Motion for
2 Injunction and now replied to their Motion to Dismiss, Your
3 Honor.

4 I'm really baffled that the fact that they say
5 that they have the right by Ordinance to impose a franchise
6 on everyone. But we all agree that the law is that your
7 Charter is the Constitution of the City. And that it is
8 clear from all case law that those are the powers and rights
9 that you derive as a City, whatever is given to you by the
10 City Charter.

11 And unless it is -- and unless a State statute
12 addresses those issues -- even if the City Charter says you
13 can do something that the State legislature says that you
14 can't, then you can't.

15 And what we're saying, Your Honor, is basically we
16 have definitions of everything that we're dealing with here.
17 We're saying we're not subject to a franchise because of the
18 type of work that we do.

19 We are not providing a service that the City's
20 providing. And I don't know where they think that that's a
21 public utility. It doesn't follow the definitions of
22 anything.

23 Section 8 specifically deals with public utilities
24 and franchisees to be granted. And yes, it is granted
25 through Ordinance. They don't come out of the blue and you

1 just don't say it's in the City Charter we can grant you an
2 Ordinance, we're going to require one.

3 And then specifically, Your Honor, even assuming
4 that the Court were to say that the type of work and the
5 type of demolition and construction waste that our clients
6 haul, whether they do it because they themselves demolish
7 the property or they put -- and they put -- they have a
8 contract with whoever they contract with to put that kind
9 of -- that waste in there. The demolition and construction
10 waste that goes into their bins -- into those containers,
11 Your Honor, -- is not just anybody can come in and put their
12 trash in there.

13 I mean, there's a contract between them and the
14 people that are doing it. They're exempt from being
15 required --

16 THE COURT: Well their argument is that it equates
17 to trash.

18 MS. MORALES: Well, but --

19 THE COURT: But you're saying that's their
20 argument.

21 MS. MORALES: Yeah, but that's not what this is
22 about. Because we don't do that. We don't provide that
23 service to the ordinary citizen. We're not taking the place
24 of the City. There's jurisdictions, I mean, in San Antonio,
25 they have the haulers and it's not just self-haulers. It's

1 haulers that haul this type of demolition and construction
2 work, they have a fee. They have an annual fee in order for
3 them to get into the -- they have a permit in order to get
4 into the landfill.

5 And here the City is trying -- has tried and tried
6 for years to impose this on them, knowing -- and there's a
7 reason why there wasn't any activity in all these years.
8 And I think that -- I don't know this for a fact, but I mean
9 it's -- we kept telling them, we don't fall under them.
10 We're not a public utility. You can't impose this
11 franchise.

12 And talk about money, four percent of what you
13 make. Your books are subject to them reviewing what you
14 make, all your contracts. It's very different from what
15 Trash Code does, which they literally put in people that
16 would rather have like the Stripes and all these companies,
17 the hotels, you know, they literally put all their trash in
18 there.

19 That's solid waste. That's clearly under the
20 statute -- under the state statute. But even if we get --
21 like I said, even if we get passed that, even if the Court
22 were to say well they -- Section 8 of their Charter does
23 work -- how it comes in there is that they're public
24 utilities, they're still exempt by State law.

25 And the City Charter and their Ordinances cannot

1 impose something on you that's contrary to City -- to the
2 City statutes. I mean, that states --

3 THE COURT: Can you repeat that again?

4 MS. MORALES: This is the States statute that --
5 even if it would say this is solid waste and it says that
6 this section does not apply to private entities that
7 contract to provide temporary solid waste disposal service
8 or construction project, which is what we do.

9 Whether you're a self-hauler or not, whether
10 you're IIIPG or PedroPete, they're contracting with a
11 construction site to haul their demolition and construction
12 waste. And what this is saying is that you cannot charge --
13 that the public entity can contract with someone like they
14 did with TrashGo or with Southern Sanitation to dispose of
15 solid waste for the City. But you can't impose it on people
16 that do this type of work. That's what the statute says.

17 THE COURT: Do you have a comment on that
18 Ms. Guerrero?

19 MS. GUERRERO-SOUTHARD: Yes, Your Honor. We're on
20 a Preliminary Injunction and Motion to Dismiss --
21 Preliminary Injunctions an extraordinary equitable relief
22 that leads to the status quo.

23 What was the status quo before the 2013 amendment
24 was that they were required, as the evidence showed, by
25 Exhibit 3 that I provided to the Court, to get a franchise

1 license if they intended to use the City landfills for the
2 purposes of transporting construction and demolition that
3 was defined under the City's Ordinance, rubbish, that they
4 have authority as home-ruled municipalities have, to
5 regulate.

6 Home-ruled municipalities have full power of self-
7 governance and you look at the Legislator, not for what
8 powers are granted, but what powers are limited. So what
9 their burden today is, is to establish that there's a
10 statute out there that says, "City, you cannot do that. You
11 cannot require a construction and demolition company" --

12 THE COURT: Isn't that what they're arguing by
13 that exemption that they point to?

14 MS. GUERRERO-SOUTHARD: Well they're saying
15 there's a definition out there that was -- that says the
16 construction, demolition for temporary purposes is not
17 encompassed within the language of this solid waste. But it
18 doesn't say, You cannot do this, City."

19 And the City is not intending to do that for
20 temporary construction and demolition. What the City is
21 saying if you yourself do not demolish the building, you
22 cannot go and say, "Well I'm just going to put my container
23 out there" with, you know, Company B who actually did the
24 demolishing to throw their stuff in there. And just because
25 we're in the business of construction and demolition say

1 that we're the ones that demolished it when we get to the
2 landfill.

3 That's the problem there. If you demolish it.
4 You take your own hammers and whatever it takes to bring
5 down building and you take that waste into the landfill,
6 you're not going to have this problem. But when somebody
7 else is doing the demolition and you're just providing a
8 container and transporting it through the City streets, then
9 that is different.

10 If you want to get your own landfill to doing
11 that, just get a Franchise Agreement. Now the Legislator
12 chooses to pre-empt a subject matter, it must do so with
13 unmistakable clarity. And I provided for the Court on
14 Tab 19 the case of *Dallas Merchant versus Concessioners*
15 *versus the City of Dallas*, a case in which what they were
16 trying to do is establish regulations for the sale -- to
17 prohibit the sale of alcohol within 300 feet from a
18 residence.

19 And TABC by that point had already been adopted
20 and what it said here is that when there is clear language
21 that prohibits -- and if we look as an example, Your Honor,
22 on page 3 of that copy -- Tab 19, page 3 -- there the TABC
23 said specifically the State may not impose stricter
24 standards on premises or businesses required to have a
25 license or permit under this Code.

1 While this encompasses alcohol, I'm trying to
2 establish, Your Honor, by this that when there's clear
3 language like this, certainly a City cannot try to pass an
4 Ordinance that is different from what the statute provides.
5 But there is no statute that they provided to this Court
6 that says, "City, you may not require a Franchise Agreement
7 for individuals that are using your streets and thorough
8 ways and alleys to transport construction and demolition
9 waste."

10 What they're saying is, those people that are
11 temporary, the ones that just do it for the purposes of, you
12 know, they've been contracted to do that work, that's
13 different. And that's not what the City is trying to
14 regulate. The City is trying to regulate people that are
15 just utilizing our streets and thorough ways to haul this
16 type of -- this type of rubbish that goes to our landfills.

17 THE COURT: Do you want to follow --

18 MS. GUERRERO-SOUTHARD: Again, I don't, you know,
19 I don't believe that they've met the merits or the standards
20 for the Preliminary Injunction. I understand the Court is
21 simply asking certain questions, so I will not delve onto
22 each argument unless the Court asks me.

23 THE COURT: I'll give you a chance later, if you'd
24 like.

25 MS. GUERRERO-SOUTHARD: Okay. Thank you.

1 THE COURT: I mean, I'm just -- Ms. Morales?

2 MS. MORALES: Yes, Your Honor.

3 The City of Laredo is a home-ruled City. That
4 means that it operates -- what that means is that you look
5 to the State Constitution, you look to the State statutes to
6 see what you can't do.

7 Normally you can do under your police power to do
8 what you have to do to regulate, of course, the disposal of
9 solid waste.

10 However, the City of Laredo has a City Charter.
11 And Ms. Guerrero and I agree that the City Charter -- that
12 is a home-ruled City -- it can everything that is not
13 prohibited by statute to do.

14 However, they -- the City of Laredo has a City
15 Charter. And it's -- the case law is ample in the cases
16 that she cites. It says:

17 "The City cannot perform a governmental function in any
18 manner contrary to the expressed provisions of its City
19 Charter."

20 In other words, if you have a City Charter and you
21 have undertaken to put all these things in your City
22 Charter, then that's what you look at. You don't go look at
23 state statute and say, "Well it doesn't prevent me from
24 requiring a franchise." She's correct. We're not going to
25 find anywhere that it says, "You, City of Laredo, you can't

1 require a franchise." That's not what that's about.

2 Our argument is about -- what we're saying is we
3 have a City Charter. So the City Charter is basically your
4 Constitution. There's case law that says that. It says
5 just like the Texas Constitution is supreme law of the State
6 of Texas, the City Charter is the supreme law of that City.

7 The City can only exercise the powers that are
8 expressly granted by its Charter. And we look at Section 8,
9 a section that says that the City can grant a franchise to
10 public utilities. I know that she's trying to make a
11 distinction says, well, by Ordinance.

12 I don't believe that's what that means. I think
13 it means public utilities. You look at the definition of
14 public utilities. We don't fall under any of those
15 categories. So why do we have this? We have what is called
16 "*Ultra Vires* Acts." All acts that go beyond the scope of
17 the powers granted by the City Charter are void. A City
18 Charter's grant of powers will be strictly construed.

19 In other words, that's your law. That's what we
20 look. We're not looking out -- what we're telling about the
21 exception, Your Honor, is that in the Safety Code and in the
22 Administrative Code, there's definitions. Those are what
23 limits what they can regulate. That's what we're saying.

24 But you start from the very beginning. At the
25 initial, this Ordinance is void. They're trying to impose a

1 franchise requirement on a non-public utility. And I think
2 we all agree that we are not a public utility. We're not an
3 electrical company; we're not a gas company. All of those
4 definitions that are in there as to what constitutes a
5 utility -- a public utility.

6 So we don't produce electricity, we don't sell
7 water, we don't have a telecommunications. All of those are
8 public utilities according to the plain language of the word
9 and the definitions that are found in the state statutes.

10 The City can pass powers that may be reasonably
11 implied from the powers granted. Well, the City Charter
12 grants them the power to regulate public utilities to impose
13 a franchise. How is that reasonably implied that you could
14 do construction and demolition work, can be imposed a
15 requirement of a franchise?

16 And there is a reason why they didn't start citing
17 them until 2014, a year after -- more than a year after the
18 Ordinance was passed, although the only thing they modified
19 was they added the recyclables because they know that this
20 -- that they're not under that statute.

21 And it is a money grab. It is, because under
22 their definition, Your Honor, of that Ordinance, the
23 gardener that goes to my house, has to take their -- has to
24 go to the landfill and has to get a franchise because he's
25 transporting somebody else's recyclables or somebody else's

1 trash.

2 That's how ridiculous it gets if you read that
3 Ordinance. Anybody who does for anybody else these things
4 has to get a franchise and not only these three people. If
5 you look at the definition, they could prevent the gardeners
6 and say, "Hey, wait a minute, you come in here, you're a
7 gardener, you come every week or every other day and you
8 bring all this trash from wherever you clean, well we're
9 going to impose a franchise on you" because that's how
10 strict and how limiting their definition is in the
11 Ordinance.

12 So what we're saying, Your Honor, is that they
13 violated their own City Charter in imposing -- in trying to
14 impose an Ordinance -- I mean, a franchise on us -- and
15 therefore, it's a void -- it's a void act and that's where
16 the violations come in.

17 Not that they have the right to regulate. Yes, if
18 the City Charter said -- I would imagine if it said that,
19 you could. I mean, non-public and whoever does this as the
20 Ordinance says, but that's not what the City Charter says.
21 And we have to give it a strict construction to what powers
22 are derived from their City Charter.

23 There is a substantial irreparable injury, Your
24 Honor, to us. We have not been able to enter into contracts
25 to do the demolition and, you know, construction, gathering

1 of waste from those companies because we're not able to go
2 to the landfill. And so of course there is. And we're
3 saying that Ordinance does not meet the requirements. It's
4 not authorized by the Charter and therefore we should not be
5 subjected to it and there should be an injunction.

6 And what happened -- why was the --

7 THE COURT: That's not the entire case of it. I
8 mean, if you still have a problem with their Ordinance, you
9 can still get a franchise fee, enter into contract
10 negotiations. If it's 4 percent, increase your bid up
11 4 percent and try to get work. And then sue them.

12 MS. MORALES: Well, but the problem, Your Honor,
13 is that we would accepting that they have a right to do that
14 and they don't. We would be saying, "We're a public
15 utility. Here we are, impose a franchise fee on us." But
16 we're not.

17 THE COURT: All right, anything else?

18 MS. MORALES: Your Honor, what was happening
19 immediately before this lawsuit was filed is that we were
20 not being required to get a franchise. Somewhere in 2014,
21 somebody either Mr. Geiss' boss, somebody told them -- don't
22 -- told the people at the landfill, "Don't let them in."

23 THE COURT: Particular to just your clients?

24 MS. MORALES: Well no, everybody.

25 THE COURT: Okay.

1 MS. MORALES: I don't think any of them can go in.

2 THE COURT: No, but what I guess you're saying is
3 you're saying that they are treating your clients unfairly
4 or everyone unfairly that's in your client's business?

5 MS. MORALES: They're getting the gardeners that
6 take the trash that they pickup from my garden in and pay
7 the fee that they're supposed to pay. They're not saying,
8 you know, you fall under this definition, which they clearly
9 do because they're transporting solid waste for somebody
10 else. Under their definition that falls in that category.
11 So everybody else is being allowed to go, except them three
12 because they're saying we have to -- and it's not only to
13 the City's landfill, Your Honor.

14 Because Defendant's Counsel talks about "We have a
15 right regulate what goes into our landfills." They're being
16 prevented from going into another landfill that is not owned
17 by the City.

18 THE COURT: Why are they being prevented to go to
19 a private landfill?

20 MS. MORALES: Because they say they don't have a
21 franchise.

22 THE COURT: But the point is they're being
23 prohibited from maybe picking up the waste, right? I mean,
24 there's nothing that keeps them -- I guess what I'm saying
25 is they're supposed to get a license to haul the waste,

1 correct?

2 MS. MORALES: There is no license to haul.

3 THE COURT: Well I said license -- the franchise.

4 The franchise covers anyone who hauls, right? And anyone
5 who deposits? So I guess my question is: If they're
6 required to get a franchise, they could get fined by hauling
7 the material they pick up. But they can't keep them out of
8 a private landfill, can they?

9 MS. CANTU: Your Honor, they sent a letter -- the
10 City Attorney of Laredo sent a letter to the Ponderosa
11 Regional Landfill stating that if they continue to allow our
12 clients into their private landfill that they would revoke
13 their franchise with the City for the Southern Sanitation
14 which is a co-owner of that landfill.

15 THE COURT: How does that work, Ms. Guerrero?

16 MS. GUERRERO-SOUTHARD: Well, Your Honor, you can
17 take waste -- solid waste and dispose it in designated
18 landfills. The City doesn't just maintain its own
19 landfills. There are other private landfills -- such as
20 Ponderosa -- and what the City Attorney wrote to Ponderosa
21 is, "Please don't allow them in because they don't have a
22 franchise fee for transporting this." They hadn't obtained
23 the required franchise.

24 THE COURT: So are you saying the private
25 landfills are also regulated by the City that it has to meet

1 certain -- the same standards as the City?

2 MS. GUERRERO-SOUTHARD: Right. They get permits.

3 THE COURT: Is that correct? They have to meet
4 the same standards of the City landfill or you somehow
5 chastise the private landfill?

6 MS. GUERRERO-SOUTHARD: Yes, Your Honor, but
7 they're regulated by the State not by the City. And all we
8 asked was don't allow these individuals who haven't obtained
9 a franchise to call to deposit this in that landfill.

10 THE COURT: That's what I'm saying. She's saying
11 the private -- this is a personal application. She's saying
12 that the private landfills are regulated by the State and
13 you're the City and you're calling them up and tell them not
14 to do that. What if they say, "Forget it, I'm going to let
15 them in."

16 I mean, it seems to me you have to have some teeth
17 to enforce that.

18 MR. GEISS: Yeah, Your Honor, the City has no
19 jurisdiction over that landfill. It's actually outside of
20 the City limits.

21 THE COURT: Okay.

22 MR. GEISS: It was just for courtesy the City
23 asked them to not allow the -- given the haul because they
24 were trying to prevent them hauling on the streets of the
25 City of Laredo, but that's basically what it was. They have

1 no --

2 THE COURT: I mean, I understand you had the
3 franchise set up that you don't want them picking up and
4 hauling it, and that's a violation in and of itself. But I
5 didn't understand how you could keep them out of a private
6 landfill.

7 MS. CANTU: I have a copy of the letter that sent
8 to Ponderosa as to landfill, Your Honor.

9 THE COURT: I mean, you can put it into evidence.
10 I mean I don't say that -- I don't think that it's
11 uncontroverted that they called the landfill and asked them
12 to keep you out, but.

13 MS. GUERRERO-SOUTHARD: Your Honor, it just says
14 you're assisting in the violation of City Ordinances
15 prohibiting this activity.

16 THE COURT: Anything else, Ms. Morales or
17 Ms. Cantu?

18 MS. MORALES: No, Your Honor, other than to point
19 out that their own citation of that other statute excludes
20 us from being -- including having to have a franchise or any
21 kind of regulation from the part of the City landfill.

22 THE COURT: All right. Do you want to follow-up,
23 Ms. Guerrero, with any --

24 MS. GUERRERO-SOUTHARD: Yeah, we can go all day,
25 but you have the Charter provision that doesn't say that you

1 can only extend or you only have the power to grant to
2 public utilities. It says, "of all public utilities." I
3 put this in evidence, I failed to label it as Exhibit 1.

4 THE COURT: It's up here and I marked on it a
5 little bit.

6 (Defense Exhibit 1 marked for identification.)

7 MS. GUERRERO-SOUTHARD: Thank you, Your Honor.

8 THE COURT: So for the Record, that blue thin mark
9 that's bracketing Paragraph 8.01 is me. You can give that
10 back to her and let her mark it one.

11 Give Ms. Morales a copy if she needs one or we'll
12 make you a copy.

13 MS. GUERRERO-SOUTHARD: I did provide one, Your
14 Honor.

15 MS. MORALES: I was trying to understand that,
16 Your Honor. Is she saying that we are a public utility?

17 MS. GUERRERO-SOUTHARD: No, not at all. It says
18 we have the power to grant franchises of all public
19 utilities. It doesn't say -- it doesn't limit it to you can
20 only grant it to public utilities as they are intending.

21 THE COURT: She's interpreting the statute as that
22 private companies are not included in that --

23 MS. GUERRERO-SOUTHARD: In this Charter that they
24 claim prevents us from doing so?

25 MS. MORALES: So where does their power come from?

1 If they're all Ordinances that pursuant to Article 8.

2 MS. GUERRERO-SOUTHARD: We're home-rule
3 municipality. We have the powers and we only look to the
4 legislative for limitations of power and even the Charter we
5 would look at it to limit the power. It doesn't limit the
6 power on its face.

7 Your Honor, I gave her a copy. It says of all
8 public utilities, not to all.

9 MS. MORALES: Cities don't -- I mean --

10 THE COURT: I understand your arguments.
11 Anything else?

12 MS. GUERRERO-SOUTHARD: Not at this time, Your
13 Honor.

14 THE COURT: Let me just take a five-minute recess
15 and I'll go in and look at this real quick and I'll be right
16 back.

17 THE MARSHAL: All rise.

18 (Recess taken from 10:44 a.m. to 10:54 a.m.)

19 THE MARSHAL: All rise.

20 THE COURT: All right, please be seated. All
21 right. I had to look through some things. I don't think I
22 need to hear any more unless you want to put something else?
23 You know sometimes you sit there for a few minutes, you
24 think I should have said that. I'm giving you that chance
25 if you like.

1 Do you want to say anything else, Ms. Morales?

2 MS. MORALES: No, Your Honor I was just discussing
3 some things with the City --

4 THE COURT: Your Honor, when I was in private
5 practice after I needed about five minutes later, God, if
6 I'd said one more thing that would have been conclusive to
7 the whole matter.

8 Do you need to say anything else, Ms. Guerrero?

9 MS. GUERRERO-SOUTHARD: No, Your Honor, thank you.

10 THE COURT: All right, then I'll try to get some
11 rulings out by the end of the week.

12 Have a good day, everyone.

13 MS. GUERRERO-SOUTHARD: Thank you, Your Honor.

14 May we be excused?

15 THE COURT: Have a good day.

16 THE MARSHAL: All rise.

17 (Proceeding adjourned at 10:54 a.m.)

18 * * * * *

19 I certify that the foregoing is a correct
20 transcript to the best of my ability from the electronic
21 sound recording of the proceedings in the above-entitled
22 matter.

23 /S/ MARY D. HENRY

24 CERTIFIED BY THE AMERICAN ASSOCIATION OF
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